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Mailed: 12 AUG 2003
Paper No. 9
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Eric Hart

Serial No. 76/276,631

Christie Gaumer, Esq. for Eric Hart.

Amos Matthews, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney).

Before Seeherman, Walters and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On June 26, 2001, Eric Hart (applicant) applied to register the mark SPEED, in typed form, on the Principal Register for "men's, women's and children's shirts, pants, jumpsuits, blouses, skirts, shorts, vests, jackets, dresses, tops, denim skirts, denim jackets, knit tops, knit bottoms, socks, t-shirts, underwear, and shoes" in International Class 25.¹

¹ Serial No. 76/276,631. The application contains an allegation that "applicant has a bona fide intention to adopt and use the mark."

The examining attorney refused to register the mark under Section 2(d) of the Trademark Act, 15 U.S.C.

§ 1052(d), because of a registration for the mark SPEED GEAR, in typed form, for "clothing; namely, shirts, T-shirts, sweat shirts, rugby shirts, polo shirts, tank tops, vests, shorts, caps, hats, head bands, visors, protective head wear, neck wear, footwear, socks, gloves, scarves, pants, jackets, coats, sweaters, bib pants, overalls, one piece suits, rain suits, and boots" in International Class 25.²

After the examining attorney made the refusal final, this appeal followed.

In a case involving a refusal under Section 2(d), we analyze the facts as they relate to the relevant factors set out in In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). See also In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); Recot, Inc. v. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000).

We begin by comparing applicant's and registrant's marks. Applicant's mark consists of the word SPEED while

² Registration No. 1,886,125 issued March 28, 1995, Section 8 affidavit accepted. The registration contains a disclaimer of the word "Gear."

registrant's mark is SPEED GEAR. Both marks are depicted in typed form so the only difference between them is the additional word "Gear" in registrant's mark. This word has been disclaimed and it is, at the very least, highly descriptive of registrant's clothing. The examining attorney has made of record a dictionary definition of the term "gear" to mean "[c]lothing and accessories: *the latest gear for teenagers*. Personal belongings, including clothing." *American Heritage Dictionary of the English Language, Third Edition* (1992).³ We agree with the examining attorney that this "term when applied to the goods is not sufficient to distinguish the marks." Brief at 5. In a similar case involving the marks LASER and LASERSWING, the Federal Circuit held that the addition of the word "Swing" to registrant's mark "Laser" did not result in the marks being dissimilar. "[B]ecause both marks begin with 'laser,' they have consequent similarities in appearance and pronunciation. Second, the term 'swing' is both common and descriptive... Regarding descriptive terms this court has noted that the descriptive component of a mark may be given little weight in reaching a conclusion on

³ Applicant's argument that the mark SPEED GEAR "likely refers to an actual mechanical gear" (Brief at 4) is not viable. When used on clothing, the term "gear" would likely be recognized as another word for "clothing."

likelihood of confusion." Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842, 1845-45 (Fed. Cir. 2000) (citations and quotation marks omitted). The registrant's word "gear" would likewise have little trademark significance.

While applicant emphasizes the differences in the mark, the only difference is the word "gear," which we find is not very significant. The fact that there is a difference between the marks does not mean that the marks are not similar. We find that the marks are dominated by the identical word "Speed." The marks look and sound similar and their meanings and commercial impression would be very similar. See Wella Corp. v. California Concept Corp., 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977)(CALIFORNIA CONCEPT and design held likely to be confused with CONCEPT for hair care products); In re Dixie Restaurants, 105 F.3d 1405, 41 USPQ 1531, 1534 (Fed. Cir. 1997) (Court found that there was a likelihood of confusion between the marks DELTA in typed form and THE DELTA CAFÉ and design; more weight given to common dominant word DELTA).

The next question is whether the goods are related. We start by noting that many of applicant's goods are identical or virtually identical to goods in the cited

registration. Both the registration's and application's identification of goods include the following goods: shirts, pants, shorts, jackets, socks, and T-shirts. Other goods are virtually identical: jumpsuits/one piece suits; shoes/footwear; tops/tank tops; and jackets/coats. We also note that other goods such as registrant's shirts would include applicant's sweat shirts, rugby shirts, and polo shirts. "When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines."

Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992). Even regarding the remaining goods that are not identical, the examining attorney has included evidence that vests and denim jackets are often registered under a common mark by the same party. See Registration Nos. 2,573,760; 2,512,125; 2,360,425; 2,445,048; 2,459,004; and 2,322,432. We find that the goods in this case are either identical or closely related.

Neither the application nor the registration contains any limitation for the goods. Therefore, because the goods are at least in part identical or virtually identical, we must presume that the goods would move through the same channels of trade to the same purchasers. When the marks

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SPEED and SPEED GEAR would be used on identical and closely related goods, potential consumers would likely believe that they originate from, or are associated with, the same source. Therefore, we conclude that there would be a likelihood of confusion in this case.

Decision: The refusal to register applicant's mark under Section 2(d) is affirmed.